

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOHN A. FARIAS,

Plaintiff,

v.

No. CV 09-0893 JCH/GBW

SOCIAL SECURITY
ADMINISTRATION, Michael J.
Astrue, Commissioner of Social
Security Administration,

Defendant.

PROPOSED FINDINGS AND RECOMMENDATION

This matter is before the Court on Defendant's Motion to Dismiss filed February 22, 2010.

On September 15, 2009, Mr. Farias filed his complaint against the Social Security Administration. *Doc. 2*. Prior to or in lieu of filing an answer to the complaint, on February 22, 2010, Defendant filed a motion to dismiss. *Doc. 15*. In its Motion, Defendant argues that Plaintiff's complaint is barred from review because it was not timely filed. *Id.* As of April 1, 2010, Plaintiff had not responded to the Motion. I then ordered Plaintiff to show cause by April 16, 2010, why his complaint should not be dismissed for failure to respond to the motion and failure to prosecute. *Doc. 16*. To date, Plaintiff has responded to neither the motion to dismiss nor the show cause order.

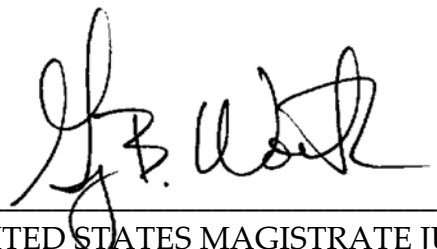
"The failure of a party to file and serve a response in opposition to a motion

within the time prescribed for doing so constitutes consent to grant the motion.”

D.N.M.LR-Civ. 7.1(b). Also, Mr. Farias’ failure to respond indicates a lack of interest in litigating his claims, and the Court has authority to dismiss his claims for failure to prosecute. *See Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-30 (1962)(“The authority of a court to dismiss *sua sponte* for lack of prosecution has generally been considered an ‘inherent power,’ governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.”); *U.S. ex rel. Jimenez v. Health Net, Inc.*, 400 F.3d 853, 855 (10th Cir. 2005)(“[D]ismissal is an appropriate disposition against a party who disregards court orders and fails to proceed as required by court rules.”); *see also Childs v. Ortiz*, 259 F. App’x 139, 141 (10th Cir. 2007).

I THEREFORE RECOMMEND that Plaintiff's case be dismissed without prejudice.

THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1)(c). A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.



UNITED STATES MAGISTRATE JUDGE